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 GROUP, INC., f/k/a DRUGMAX, INC., a Nevada corporation and
 Cross-Complainant FAMILYMEDS, INC., a Connecticut
 corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

MCKESSON CORPORATION, a Delaware
 corporation,

Plaintiff,
 v.

FAMILYMEDS GROUP, INC., f/k/a
 DRUGMAX, INC., a Nevada corporation,

Defendant.

FAMILYMEDS GROUP, INC., f/k/a
 DRUGMAX, INC., a Nevada corporation,

Counterclaimant,
 v.

MCKESSON CORPORATION, a Delaware
 corporation,

Counterdefendant.

FAMILYMEDS, INC., a Connecticut
 corporation,

Cross-Complainant,
 v.

MCKESSON CORPORATION, a Delaware
 corporation,

Cross-Defendant.

CASE NO. CV07-5715 WDB

**EVIDENTIARY OBJECTIONS IN
 OPPOSITION TO MOTION FOR
 SUMMARY JUDGMENT OR, IN THE
 ALTERNATIVE, SUMMARY
 ADJUDICATION BY MCKESSON
 CORPORATION**

Accompanying papers: Memorandum of Points
 and Authorities; Kenefick Declaration; Tregillis
 Declaration; Separate Statement; Mercadante
 Declaration; and (Proposed Order)

Time: August 20, 2008
 Date: 1:30 p.m.
 Place: Ctrm. 4
 1301 Clay St., 3d Floor
 Oakland, CA
 Judge: The Hon. Wayne D. Brazil

Complaint filed: Nov. 9, 2007
 Counterclaim filed: Dec. 17, 2007
 Cross-Complaint Filed: Dec. 17, 2007
 Trial date: none set

Defendant and Counterclaimant Familymeds Group, Inc., f/k/a Drugmax, Inc., a Nevada corporation and Cross-Complainant Familymeds, Inc., a Connecticut corporation (collectively, "**Familymeds**") hereby submit the following Evidentiary Objections in Opposition to Motion for Summary Judgment or, in the Alternative, Summary Adjudication by McKesson Corporation:

I. DECLARATION OF ANA SCHRANK

Familymeds hereby objects to the Declaration of Ana Schrank in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication by McKesson Corporation (the "**Schrank Declaration**") as follows:

1. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.2, ¶ 3(a)]

On February 2, 2007, for fair and valuable consideration, McKesson and FM Group entered into a written contract entitled "Supply Agreement" (the "Supply Agreement"). The Supply Agreement is a confidential agreement. However, a true and correct copy of the Supply Agreement redacted so that only non-confidential provisions material to the Motion remain is attached to that certain "Compendium of Exhibits" filed and served herewith (the "Exhibit Compendium").

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932

(4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

2. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.2, ¶ 3(b)]

The Supply Agreement provides for a term of three years commencing on December 28, 2006.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

3. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.2, ¶ 3(c)]

The Supply Agreement was signed and executed by duly authorized representatives of both FM Group and McKesson.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,

1 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

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3 Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d
4 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,
5 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

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7 demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal
8 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932
9 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

10 **4. OBJECTIONABLE EVIDENCE:**

11 [Schrank Declaration pp.2-3, ¶ 3(d)]

12 Under the Supply Agreement, McKesson agreed to sell to FM Group,
13 and FM Group agreed to buy, certain "Merchandise" described
14 therein, including prescription drugs and other health and beauty care
15 products.

15 **EVIDENTIARY OBJECTIONS**

16 A. The best evidence of the Supply Agreement is the Supply Agreement itself.
17 Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

18 B. This statement improperly seeks to make conclusions of law. Federal Rule of
19 Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,
20 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

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23 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,
24 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

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26 demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal
27 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932
28 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

5. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.3, ¶ 3(e)]

The Supply Agreement is a fully integrated agreement. It provides in Paragraph 17(A):

This Agreement embodies the entire agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements, understandings and representations with the exception of any promissory note, security agreement or other credit or financial related document(s) executed by [FM Group] or between [FM Group] and McKesson. This Agreement may not be modified, supplemented or extended except by a writing signed by both parties.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

6. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.3, ¶ 3(f)]

The Supply Agreement provides that invoices must be paid within seven days of the invoice date. Paragraph 4(A) of the Supply Agreement provides:

Payment for Merchandise delivered to [FM Group's] retail pharmacies shall be paid by [FM Group] as follows: Invoices are due and payable within seven days from the invoice date via EFT or ACH.

The term EFT means "Electronic Funds Transfer." The reference to ACH payments refers to wire transfers using the "Automated Clearing House" system.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763-764 (2nd Cir. 1991).

7. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.3, ¶ 3(g)]

If payments are made late, FM Group is in default and certain consequences result, including an increase in the price payable for the produced delivered to FM Group, and the imposition of service charges. Paragraph 4(E) of the Supply Agreement provides:

Any payments made after the due date indicated shall result in a two percent (2%) (or the maximum amount permissible under applicable law, if lower) increase in the purchase price of the Merchandise. A one percent (1%) service charge (or the maximum amount permissible under applicable law, if lower) will be imposed semi-monthly on all balances delinquent for more than fifteen (15) days.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of

Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

8. **OBJECTIONABLE EVIDENCE:**

[Schrank Declaration p.3, ¶ 3(h)]

The Supply Agreement provides that invoices must be paid by the applicable due date without set off or excuse. The Supply Agreement provides in Paragraph 4(F):

[FM Group] agrees to render payment in full to McKesson on the applicable due date as specified in this Agreement without (i) making any deductions, short payments, or other accounts payable adjustments to such obligation; or (ii) seeking to condition such remittance on any demand for or receipt of proofs of delivery. Any accounts payable adjustments claimed by [FM Group] shall require prior written authorization of McKesson and must be supported by accompanying detail documenting the basis for any such requested adjustments.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

9. **OBJECTIONABLE EVIDENCE:**

[Schrank Declaration pp.3-4, ¶ 3(i)]

Paragraph 12(A) of the Supply Agreement provides, in part, that

"Failure by [FM Group] to make any payment when due in accordance with the terms of its Agreement with McKesson constitutes a default."

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

10. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.4, ¶ 3(j)]

The Supply Agreement embodies a choice of law provision. Specifically, Paragraph 12(E) of the Agreement provides that:

This Agreement shall be construed in accordance with the laws of the State of California without regard to the provisions of Section 1654 of the California Civil Code or the rules regarding conflict of laws.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

11. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.4, ¶ 3(k)]

The Agreement also contains a section detailing the "Cost of Goods" for Merchandise that are delivered to FM Group. As relevant here, Paragraph 5(c) of the Agreement sets forth a pricing provision, which details that in addition to the 2% Price Increase and the 1% Service Charge, the price that FM Group must pay to McKesson for merchandise increases as the volume of purchases decreases, and vice versa, across several levels of purchase volumes.

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EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

12. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.4, ¶ 3(l)]

I have read the entire contract that is the Supply Agreement. The Supply Agreement contains no provision imposing any obligation up on McKesson to perform an accounting for FM Group with regard to the amounts ordered by FM Group, paid to McKesson or owing to McKesson.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement is the Supply Agreement itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932

(4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

13. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.4, ¶ 4]

Based on my review of the Books and Records re FM Group, I can testify that the Merchandise listed in each issued to FM Group or one of its constituent pharmacies. Moreover, at no time during the period that I sought to collect the sums owing to McKesson from FM Group in my role as Vice President, Financial Services did any representative of FM Group allege that FM Group had been billed for Merchandise that was not delivered to FM Group or one of its constituent pharmacies. The Books and Records re FM Group demonstrate that McKesson performed all of its material obligations under the Supply Agreement.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Books and Records re FM Group referenced in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement has not properly demonstrated that the referenced summary, as well as the underlying charts, summaries, and calculations upon which it is based, accurately summarize the underlying documentation and that such underlying documentation is voluminous and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

D. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

E. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

F. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

14. **OBJECTIONABLE EVIDENCE:**

[Schrank Declaration pp.4-5, ¶ 5]

Based on my review of the Books and Records re FM Group, I can testify that although FM Group generally paid invoices seven after their invoice date as required by the Supply Agreement, FM Group did not always do so. When FM Group did not make a payment, FM Group would miss an entire days' payment, meaning that all the invoices dated seven days earlier went unpaid. This began to occur almost immediately after the Supply Agreement was signed.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Books and Records re FM Group referenced in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

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and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

15. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.5, ¶ 6]

After missing payment for a particular day's invoices, FM Group would skip paying those invoices, choosing to pay subsequent invoices with invoice dates seven days earlier to avoid charges that accrue when an invoice is paid late. In this way, FM Group could avoid incurring service charges and could qualify for timely payment discounts on other invoices, though FM Group had missed the payments due for a particular date's purchase. For example, if FM Group failed to make a payment for invoices due on March 7, 2007 (meaning the particular invoices dated as of March 1, 2007), instead of curing the default that had occurred with regard to the invoices dated March 2, 2007 and leave the invoice due on March 7, 2007 unpaid.

EVIDENTIARY OBJECTIONS

A. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

16. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.5, ¶7]

To induce McKesson to continue to ship goods to FM Group under the Supply Agreement in the wake of several of the missed payment days, FM Group promised McKesson that it would add some additional money to future daily remittances so that the delinquency relating to missed days would be paid down while at the same time FM Group could continue to remain current on other invoices. In practice, this resulted in FM Group adding \$5,000 or \$10,000 "extra" to its daily remittances. These payments, referred to as "adders," did little to address the shortfall because one day's invoices could aggregate hundreds of thousands of dollars. Indeed, on April 7, 2007 FM Group failed to make the payment for the invoices dated March

31, 2007 which resulted in unpaid (or "open") invoices aggregating \$531,138.64 that remain unpaid to this day.

EVIDENTIARY OBJECTIONS

A. The best evidence of the invoices referenced in this paragraph are the invoices themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

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17. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.5, ¶8]

In addition to making "adder" payments of \$5,000 or \$10,000 to pay down invoices outstanding on missed due dates, FM Group induced McKesson to continue to ship product by advising McKesson that FM Group was selling off its stores and that the sales proceeds would be used to bring FM Group current. In fact, FM Group advised us that it had entered into an agreement executed in February, 2007 to sell the majority of its stores to Walgreen's and that those proceeds would be used to pay McKesson in full.

///

EVIDENTIARY OBJECTIONS

A. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

18. OBJECTIONABLE EVIDENCE:

[Schrack Declaration p.6, ¶9]

After the sale to Walgreen's apparently closed, there was no substantial pay down of the amounts owing to McKesson for past-due invoices. Instead, FM Group continued to rely on adder payments. It then assured us that it planned to sell the stores that had not been sold to Walgreens in smaller sales that would generate sales proceeds and that those sales proceeds would be made available to pay McKesson for goods shipped to FM Group and to cure defaults relating to open invoices. Based on these assurances, McKesson continued to allow FM Group to order product even as the number of pharmacies operated under the FM Group umbrella began to dwindle and no substantial payments were made to McKesson using sale proceeds from store sales.

EVIDENTIARY OBJECTIONS

A. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

///

19. OBJECTIONABLE EVIDENCE:

[Schrack Declaration p.6, ¶10]

On September 17, 2007, I advised FM Group that unless it made a substantial payment on account of the outstanding amounts owing as of that date, no further shipments would be made. By this time, FM Group was down to only a handful of stores meaning that the prospect of new store sales actually paying off the open invoices was looking doubtful.

EVIDENTIARY OBJECTIONS

A. This statement is not rationally based on the perception of the witness.

Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

B. The statement constitutes inadmissible hearsay not subject to any exception.

Federal Rule of Evidence 802; See Superior Fireplace Co. v. Majestic Products Co., (Fed. Cir. 2001) 270 F.3d 1358, 1365–1366.

20. OBJECTIONABLE EVIDENCE:

[Schrack Declaration p.6, ¶11]

At no time during the entire period that we were trying to collect the outstanding invoices from FM Group through the time I advised FM group that McKesson could no longer ship to them did FM Group assert that there were any pricing errors or issues with regard to the amounts stated as owing on any of their invoices.

EVIDENTIARY OBJECTIONS

A. This statement is not rationally based on the perception of the witness.

Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

C. The statement constitutes inadmissible hearsay not subject to any exception. Federal Rule of Evidence 802; See Superior Fireplace Co. v. Majestic Products Co., (Fed. Cir. 2001) 270 F.3d 1358, 1365–1366.

21. **OBJECTIONABLE EVIDENCE:**

[Schrank Declaration p.6, ¶12]

Once I told FM Group that McKesson was going to stop shipping due to the failure of FM Group to cure its default, FM Group stopped making any payments to McKesson. Because of FM Group's payment methodology, this meant that two very old, unpaid invoices went unpaid. In addition, no payments were made for any of the invoices falling due after September 17, 2007, although approximately \$10,000 in "adder" payments received before September 17, 2007 were credited against certain of these invoices as well as \$38,649.88 in returns that were processed on September 14, 2007.

EVIDENTIARY OBJECTIONS

A. The best evidence of the invoices referenced in this paragraph are the invoices themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

E. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

F. The statement constitutes inadmissible hearsay not subject to any exception. Federal Rule of Evidence 802; See Superior Fireplace Co. v. Majestic Products Co., (Fed. Cir. 2001) 270 F.3d 1358, 1365–1366.

G. This statement has not properly demonstrated that the referenced calculations, as well as the underlying charts, summaries, and calculations upon which it is based, accurately summarize the underlying documentation and that such underlying documentation is voluminous and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845

22. **OBJECTIONABLE EVIDENCE:**

[Schrank Declaration p.7, ¶13]

The invoices affected by FM Group's refusal to make further payments to McKesson is as follows:

Invoice Date	Due Date	Gross Payment Owed	Amount initially billed because invoices presume FM Group will qualify for "timely payment" discount
2/26/07	3/5/07	110,873.35	108,655.87
3/31/07	4/7/07	531,138.64	520,338.35
9/11/07	9/18/07	34,745.61	34,037.15
9/12/07	9/19/07	23,208.17	22,740.64
9/13/07	9/20/07	21,666.97	21,233.63
9/14/07	9/21/07	26,575.03	26,044.56
9/17/07	9/24/07	14,610.90	14,423.89

The "Gross Payment Owed" column refers to what FM Group owes on account of goods delivered to FM Group after FM Group lost its discount for timely payment.

EVIDENTIARY OBJECTIONS

A. The best evidence of the invoices referenced in this paragraph are the invoices themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are

not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement has not properly demonstrated that the referenced chart, summaries, and calculations, as well as the underlying charts, summaries, and calculations upon which it is based, accurately summarize the underlying documentation and that such underlying documentation is voluminous and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

E. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

23. **OBJECTIONABLE EVIDENCE:**

[Schrank Declaration p.7, ¶14]

D&K Healthcare Resources, Inc. ("D&K") is a distributor of pharmaceutical and other products similar to those supplied by McKesson. In August 2005, McKesson acquired all of the stock of D&K. D&K and McKesson are separate corporate entities.

EVIDENTIARY OBJECTIONS

A. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

B. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,

551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

24. **OBJECTIONABLE EVIDENCE:**

[Schrack Declaration p.7, ¶15]

At the time McKesson acquired D&K's stock, one of D&K's customers was FM, Inc. FM Inc. and D&K were parties to a "Prime Warehouse Supplier Agreement" dated December 28, 2004 (the "D&K Contract") to which Valley Drug Company South also was a party. The D&K Contract was later amended by a "First Amendment to Prime Warehouse Supplier Agreement" dated December 27, 2005 and executed by Drugmax, Inc. (later known as FM Group), FM Inc. and D&K (the "D&K Amendment"). True and correct copies of the relevant pages (the front and signature pages) of the D&K Contract and D&K Amendment are attached to the Exhibit Compendium as Exhibit B and Exhibit C, respectively. I am informed that FM Inc. is a subsidiary of FM Group. McKesson was never a party to the D&K Contract, nor did it sign the D&K Amendment which occurred after McKesson acquired the stock of D&K.

EVIDENTIARY OBJECTIONS

A. The best evidence of the D&K Contract and the D&K Amendment referenced in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,

551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

E. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

25. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.8, ¶16]

McKesson did not assume the liabilities of D&K, nor is it the successor in interest to D&K.

EVIDENTIARY OBJECTIONS

A. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

B. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

26. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.8, ¶17]

I am familiar with the Form 10-Q that McKesson filed with the Securities and Exchange Commission for the quarter ending September 30, 2005. The first paragraph from the 10-Q cited by FM Group reads:

In August 2005, we acquired substantially all of the issued and outstanding stock of D&K Healthcare Resources, Inc. ("D&K") of St. Louis, Missouri, for an aggregate cash purchase price of \$478 million, including the assumption of D&K's debt. D&K is primarily a

wholesale distributor of branded and generic pharmaceuticals and over-the-counter health and beauty products to independent and regional pharmacies, primarily in the Midwest. The results of D&K's operations have been included in the condensed consolidated financial statements within our Pharmaceutical Solutions segment since the August acquisition date.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Form 10-Q referenced in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

27. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.8, ¶17]

I am familiar with the Form 10-Q that McKesson filed with the Securities and Exchange Commission for the quarter ending September 30, 2005. The first paragraph from the 10-Q cited by FM Group reads:

In August 2005, we acquired substantially all of the issued and outstanding stock of D&K Healthcare Resources, Inc. ("D&K") of St. Louis, Missouri, for an aggregate cash purchase price of \$478 million, including the assumption of D&K's debt. D&K is primarily a wholesale distributor of branded and generic pharmaceuticals and over-the-counter health and beauty products to independent and regional pharmacies, primarily in the Midwest. The results of D&K's operations have been included in the condensed consolidated financial statements within our Pharmaceutical Solutions segment since the August acquisition date.

The foregoing provision confirms that the acquisition of D&K was a stock acquisition, not a merger. The reference to an "assumption of D&K's debt" does not mean that the operational liabilities of D&K became the liabilities of McKesson. Instead, it referred to the calculation of the \$478 million purchase price. In other words, McKesson bought D&K with all of its liabilities for \$478 million, not for \$478 million less the amount needed to pay off D&K's debt. A true and correct copy of the cover page and the relevant page from the 10-Q containing the cited language is attached to the Exhibit Compendium as Exhibit D.

///

EVIDENTIARY OBJECTIONS

A. The best evidence of the form 10-Q referenced in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

E. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

28. OBJECTIONABLE EVIDENCE:

[Schrank Declaration pp.8-9, ¶18]

The second paragraph from the 10-Q cited by FM Group also appears on page 7 of the 10-Q and it reads:

In connection with the D&K acquisition, we have recorded \$27 million of liabilities relating to facility exit costs as part of the purchase price allocation. Additional restructuring costs are anticipated to be incurred as the business integration plans are finalized. These restructuring costs are anticipated to be paid by mid-2007.

The foregoing excerpt does not mean that D&K's liabilities are now McKesson's liabilities. The statement merely explains how McKesson was accounting for \$27 million in facility exit costs: as part of the purchase for D&K. The reference to business integration had to do with having the computer systems used by D&K and those

used by McKesson communicate with one another. It did not mean that D&K was subsumed into McKesson. D&K continues to exist as a separate legal entity and remains liable for its debts, if any.

EVIDENTIARY OBJECTIONS

A. The best evidence of the form 10-Q referenced in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

E. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

29. OBJECTIONABLE EVIDENCE:

[Schrank Declaration p.9, ¶19]

As part of my collection efforts, I asked FM Group on several occasions for even one example of an incorrect price or for even one item of evidence that FM Group had overpaid McKesson. To date, FM Group has provided no such example or evidence. FM Group also has not provided McKesson with a specific amount it asserts McKesson owes to FM Group, nor with any list of products for which it alleges it was overcharged.

EVIDENTIARY OBJECTIONS

A. The statement constitutes inadmissible hearsay not subject to any exception.

1 Federal Rule of Evidence 802; See Superior Fireplace Co. v. Majestic Products Co., (Fed. Cir.
2 2001) 270 F.3d 1358, 1365–1366.

3 B. This statement is not rationally based on the perception of the witness.
4 Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d
5 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,
6 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

7 C. This statement is vague, ambiguous, and conclusory, and therefore, fails to
8 demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal
9 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932
10 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

11 **30. OBJECTIONABLE EVIDENCE:**

12 [Schrank Declaration p.9, ¶20]

13 By reference to the Books and Records re FM Group, I determined at
14 the time that we filed the Complaint that as of October 31, 2007, FM
15 Group owed McKesson at least \$724,574.80. That amount included
16 the 2% Price Increase and the 1% Service Charge authorized under
17 the Supply Agreement after failure to make payment on time, but it
did not include the price increase that applies because FM Group took
advantage of certain discounts attributable to the volume of product it
purchased that it did not qualify for.

18 **EVIDENTIARY OBJECTIONS**

19 A. The best evidence of the Books and Records re FM Group referenced in this
20 paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v.
21 Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

22 B. Sworn or certified copies of the documents referred to in this statement are
23 not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J,
24 Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

25 C. This statement has not properly demonstrated that the referenced calculation,
26 as well as the underlying charts, summaries, and calculations upon which it is based, accurately
27 summarize the underlying documentation and that such underlying documentation is voluminous
28 and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470

1 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

2 D. This statement improperly seeks to make conclusions of law. Federal Rule of
3 Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,
4 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

5 E. This statement is not rationally based on the perception of the witness.
6 Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d
7 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,
8 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

9 F. This statement is vague, ambiguous, and conclusory, and therefore, fails to
10 demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal
11 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932
12 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

13 **31. OBJECTIONABLE EVIDENCE:**

14 [Schrank Declaration p.9, ¶21]

15 I have recently checked the Books and Records re FM Group. As of
16 May 30, 2008 FM Group owed McKesson at least \$814,419.44,
17 excluding the price increase that applies due to FM Group's failure to
18 qualify for volume price discounts that it took. Service Charges under
the Supply Agreement continued to accrue at the rates set forth in the
Supply Agreement.

19 **EVIDENTIARY OBJECTIONS**

20 A. The best evidence of the Books and Records re FM Group referenced in this
21 paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v.
22 Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

23 B. Sworn or certified copies of the documents referred to in this statement are
24 not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J,
25 Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

26 C. This statement improperly seeks to make conclusions of law. Federal Rule of
27 Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,
28 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

D. This statement has not properly demonstrated that the referenced calculation, as well as the underlying charts, summaries, and calculations upon which it is based, accurately summarize the underlying documentation and that such underlying documentation is voluminous and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

E. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

F. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

II. DECLARATION OF LESLIE MORGAN

Familymeds hereby objects to the Declaration of Leslie Morgan in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication by McKesson Corporation (the "**Morgan Declaration**") as follows:

1. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.3 ¶9]

In its contract with McKesson, FM Group agreed that it would pay the amount shown on each invoice within seven days after the invoice date. At the conclusion of every calendar month, a "Statement" is generated by the SAP System and was typically sent electronically to FM Group as a courtesy, and a copy is posted on the SMO System. Each such Statement lists as of the date the Statement is generated the amounts outstanding on an invoice-by invoice basis, it identifies any past due amounts, it lists applicable service charges, it indicates the late charge that will be owed if the statement is not timely paid, it lists each "add-bill" item, and it lists all applicable credits, including for returned items. Each of the adjustments reflected on the Statement is explained below:

EVIDENTIARY OBJECTIONS

A. The best evidence of FM Group's "contract with McKesson" and the

"Statements" referenced in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

E. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763-764 (2nd Cir. 1991).

2. **OBJECTIONABLE EVIDENCE:**

[Morgan Declaration p.3 ¶9(a)]

Service Charges, Late Charges and Loss of Timely Payment Discount: Under McKesson's contract with FM Group, the parties agreed that if invoices were not paid timely, FM Group would lose the discount given to FM Group for timely payment and would also incur a "Service Charge" as follows:

Any payments made after the due date indicated herein shall result in a two percent (2%) (or the maximum amount permissible under applicable law, if lower) increase in the purchase price of the Merchandise. A one percent (1%) service charge (or the maximum amount permissible under applicable law, if lower) will be imposed semi-monthly on all balances delinquent more than fifteen (15) days.

EVIDENTIARY OBJECTIONS

A. The best evidence of "McKesson's contract with FM Group" referenced in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton,

116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

3. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.3 ¶9(b)]

Add-Bills: Items classified as "add-bills" are charges that McKesson adds to a customer's account due to chargeback discrepancies. Such discrepancies arise when a customer pays a contract price for an item and it turns out the customer was not eligible for that contract price or in circumstances where the price loaded into McKesson's data base was too low. Contract prices paid by a customer are negotiated between the customer and the manufacturer or other supplier of the particular pharmaceutical. McKesson is not responsible for negotiating that contract price between the customer and the manufacturer/supplier. An add-bill requires McKesson's customer to pay the difference between the contract price it negotiated with the manufacturer/supplier and the lower price that was erroneously charged on the relevant invoices.

EVIDENTIARY OBJECTIONS

A. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

B. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,

551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F2d 759, 763–764 (2nd Cir. 1991).

4. **OBJECTIONABLE EVIDENCE:**

[Morgan Declaration p.3 ¶9(c)]

Service Charges, Late Charges and Loss of Timely Payment Discount: Under McKesson's contract with FM Group, the parties agreed that if invoices were not paid timely, FM Group would lose the discount given to FM Group for timely payment and would also incur a "Service Charge" as follows:

Any payments made after the due date indicated herein shall result in a two percent (2%) (or the maximum amount permissible under applicable law, if lower) increase in the purchase price of the Merchandise. A one percent (1%) service charge (or the maximum amount permissible under applicable law, if lower) will be imposed semi-monthly on all balances delinquent more than fifteen (15) days.

EVIDENTIARY OBJECTIONS

A. The best evidence of "McKesson's contract with FM Group" referenced in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932

(4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

5. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.4 ¶9(c)]

Credits. These items consist of reductions to the amounts owed by FM Group to McKesson usually based on returns.

EVIDENTIARY OBJECTIONS

A. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

B. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

6. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.4 ¶10]

A Statement for FM Group as of May 30, 2008 is attached to the "Compendium of Exhibits" filed and served herewith (the "Exhibit Compendium") as Exhibit E. FM Group also has a copy of that Statement. The aggregate amount owing to McKesson as reflected on the May 30 Statement is \$814,419.44. That figure does not include additional amounts owing by FM group to McKesson on account of various discounts taken by FM Group for which FM Group did not qualify.

EVIDENTIARY OBJECTIONS

A. The best evidence of the May 30 Statement referenced in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

D. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

E. This statement has not properly demonstrated that the referenced calculation, as well as the underlying charts, summaries, and calculations upon which it is based, accurately summarize the underlying documentation and that such underlying documentation is voluminous and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

7. **OBJECTIONABLE EVIDENCE:**

[Morgan Declaration p.4 ¶11]

As part of my audit role for McKesson, I caused several invoices sent to FM Group containing more than 90 different products to be audited, meaning that I investigated what base-line price was used by the SAP System and how the price that appeared on the invoice was calculated. Of the audited invoices, there was not a single error made in the computation of FM Group's Cost of Goods.

EVIDENTIARY OBJECTIONS

A. The best evidence of the invoices referenced in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal

1 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932
 2 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

3 C. This statement improperly seeks to make conclusions of law. Federal Rule of
 4 Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,
 5 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

6 D. This statement is vague, ambiguous, and conclusory, and therefore, fails to
 7 demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal
 8 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932
 9 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

10 E. This statement improperly attempts to submit an opinion based on scientific,
 11 technical or other specialized knowledge. Federal Rule of Evidence 701(c); Certain Underwriters at
 12 Lloyd's, London v. Sinkovich, 232 F.3d 200, 204–205 (4th Cir. 2000).

13 8. OBJECTIONABLE EVIDENCE:

14 [Morgan Declaration p. 4 ¶12]

15 The business relationship between McKesson and FM Group is
 16 governed by that certain "Supply Agreement" (the "Supply
 17 Agreement") signed by McKesson and FM Group, which was dated
 as of February 2, 2007 and effective as of December 28, 2007. I have
 read that agreement and am very familiar with its contents.

18 EVIDENTIARY OBJECTIONS

19 A. The best evidence of the Supply Agreement referenced in this paragraph is
 20 the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536,
 21 1545 (DC Cir. 1997).

22 B. This statement improperly seeks to make conclusions of law. Federal Rule of
 23 Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,
 24 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

25 C. This statement is vague, ambiguous, and conclusory, and therefore, fails to
 26 demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal
 27 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932
 28 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763–764 (2nd Cir. 1991).

9. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.4 ¶13]

The Supply Agreement permitted FM Group to purchase Merchandise from McKesson for a price defined in the Supply Agreement as the "Cost of Goods."

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement referenced in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763-764 (2nd Cir. 1991).

10. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.4 ¶14]

FM Group's "Cost of Goods" for any particular piece of Merchandise was determined by a formula set forth in the Supply Agreement. That formula relied in each case on a base-line price for the particular product, which was either the "Wholesale Acquisition Cost" ("WAC"), contract pricing, or one of two special pricing models. All such reference prices are entered into McKesson's data base and on the SAP System in the ordinary course of McKesson's business at or about the time there is any change in such reference prices.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement from which the terms referred to in this paragraph are taken from is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal

1 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932
 2 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., 937 F.2d 759, 763-764 (2nd Cir. 1991).

3 C. This statement improperly seeks to make conclusions of law. Federal Rule of
 4 Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,
 5 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

6 **11. OBJECTIONABLE EVIDENCE:**

7 [Morgan Declaration p.5 ¶15]

8 The vast majority of the pricing relevant to FM Group was based on
 9 either contract pricing or WAC. "Contract pricing" is the price FM
 10 Group has itself negotiated the price with the vendor or the
 11 manufacturer of a particular item.

12 **EVIDENTIARY OBJECTIONS**

13 A. The best evidence of the Supply Agreement from which the terms referred to
 14 in this paragraph are taken from is the document itself. Federal Rule of Evidence 1002; See United
States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

15 B. This statement improperly seeks to make conclusions of law. Federal Rule of
 16 Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia,
 17 Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

18 C. This statement is vague, ambiguous, and conclusory, and therefore, fails to
 19 demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal
 20 Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932
 21 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F.2d 759, 763-764.

22 D. This statement is not rationally based on the perception of the witness.
 23 Federal Rule of Evidence 701; See Kloepper v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d
 24 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,
 25 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

26 **12. OBJECTIONABLE EVIDENCE:**

27 [Morgan Declaration p.5 ¶16]

28 For goods based on "WAC prices", McKesson refers to the published

wholesale acquisition cost posted by the applicable vendor.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement from which the terms referred to in this paragraph are taken from is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F.2d 759, 763-764.

13. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.5 ¶17]

Certain products purchased by FM Group were based on special pricing called "National Specialty Pricing" and "Net-Billed" pricing. The National Specialty Priced products included caps and vials - that is, the containers into which pharmaceutical products are dispensed. The National Specialty price for these caps and vials was WAC.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement from which the terms referred to in this paragraph are taken from is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F.2d 759, 763-764.

14. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.5 ¶18]

"Net-billed" pricing items include slow moving items might have special prices as either an incentive to customers to buy the product, or in some cases, as a disincentive to customers to ask McKesson to stock the particular product.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement from which the terms referred to in this paragraph are taken from is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F.2d 759, 763-764.

15. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.5 ¶19]

Since the effective date of the Supply Agreement, FM Group has ordered and received delivery of goods from McKesson aggregating nearly \$60,000,000.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Supply Agreement referred to in this paragraph is the document itself. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement improperly seeks to make conclusions of law. Federal Rule of Evidence 701; Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir. 1985); Gonzalez v. El Dia, Inc., 304 F.3d 63, 68, fn.3 (1st Cir. 2002).

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F.2d 759, 763-764.

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546, 551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F.3d 180, 197.

E. This statement has not properly demonstrated that the referenced calculation, as well as the underlying charts, summaries, and calculations upon which it is based, accurately summarize the underlying documentation and that such underlying documentation is voluminous and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

16. **OBJECTIONABLE EVIDENCE:**

[Morgan Declaration p.5 ¶20]

FM Group and its constituent pharmacies submitted orders to McKesson on almost a daily basis utilizing the SMO System. Once invoices were generated by the SAP System as described above, they would be transmitted to the SMO System where they could be readily accessed by FM Group 24 hours a day, seven days a week.

EVIDENTIARY OBJECTIONS

A. The best evidence of the SMO System and SAP System records referred to in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F.2d 759, 763-764.

D. This statement is not rationally based on the perception of the witness. Federal Rule of Evidence 701; See Kloepfer v. Honda Motor Co., Ltd., (10th Cir. 1990) 898 F.2d 1452, 1459; National Hispanic Circus, Inc. v. Rex Trucking, Inc., (5th Cir. 2005) 414 F.3d 546,

551; SEC v. Infinity Group Co., (3rd Cir. 2000) 212 F3d 180, 197.

17. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.5 ¶21]

To verify the accuracy of McKesson's outstanding invoices, I randomly selected three representative invoices to "audit" for pricing errors. Those three invoices reflected orders made on January 29, 2007, March 23, 2007, and July 13, 2007. Those invoices covered 91 line items of products. True and correct copies of those invoices (the "Sample Invoices") are attached to the Exhibit Compendium as composite Exhibit F. The pricing on the sample Invoices has been redacted as it is available to FM Group but is otherwise confidential.

EVIDENTIARY OBJECTIONS

A. The best evidence of the Sample Invoices referred to in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F2d 759, 763-764.

C. This statement improperly attempts to submit an opinion based on scientific, technical or other specialized knowledge. Federal Rule of Evidence 701(c); Certain Underwriters at Lloyd's, London v. Sinkovich, 232 F.3d 200, 204–205 (4th Cir. 2000).

D. The procedure described in this statement, and the conclusion resulting therefrom, are not derived by scientific method and are not grounded in the methods and procedures of science. Federal Rule of Evidence 702; Daubert v. Merrell Dow Pharmaceuticals, Inc., (1993) 509 U.S. 579, 591.

18. OBJECTIONABLE EVIDENCE:

[Morgan Declaration p.6 ¶22]

I have reviewed each of the invoices attached to the Exhibit Compendium as Exhibit F and investigated whether the correct base-line price described above, (sic) was used and whether the correct algorithm was used to calculate the price reflected on the invoice. Each of the invoices I tested contained all four types of base-line

prices as described above: contract, WAC and the two types of special pricing. After checking each of the base-line prices, I determined that none of the invoices I investigated had any errors.

EVIDENTIARY OBJECTIONS

A. The best evidence of the invoices referred to in this paragraph are the documents themselves. Federal Rule of Evidence 1002; See United States v. Holton, 116 F.3d 1536, 1545 (DC Cir. 1997).

B. Sworn or certified copies of the documents referred to in this statement are not attached to the affidavit. Federal Rule of Civil Procedure 56(e)(1); School Dist. No. 1J, Multnomah County v. ACandS, Inc., (9th Cir. 1993) 5 F.3d 1255, 1262.

C. This statement is vague, ambiguous, and conclusory, and therefore, fails to demonstrate the requisite personal knowledge. Federal Rule of Civil Procedure 56(e)(1); Federal Rule of Evidence 601; M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930, 932 (4th Cir. 1982); Folio Impressions, Inc. v. Byer Calif., (2nd Cir. 1991) 937 F.2d 759, 763-764.

D. This statement improperly attempts to submit an opinion based on scientific, technical or other specialized knowledge. Federal Rule of Evidence 701(c); Certain Underwriters at Lloyd's, London v. Sinkovich, 232 F.3d 200, 204-205 (4th Cir. 2000).

E. The procedure described in this statement, and the conclusion resulting therefrom, are not derived by scientific method and are not grounded in the methods and procedures of science. Federal Rule of Evidence 702; Daubert v. Merrell Dow Pharmaceuticals, Inc., (1993) 509 U.S. 579, 591.

F. This statement has not properly demonstrated that the referenced summary, as well as the underlying charts, summaries, and calculations upon which it is based, accurately summarize the underlying documentation and that such underlying documentation is voluminous and otherwise admissible. Federal Rule of Evidence 1006; U.S. v. Milkiewicz, (1st Cir. 2006) 470 F.3d 390, 396; State Office Sys. v. Olivetti Corp., (10th Cir. 1985) 762 F.2d 843, 845.

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1 DATED: July 30, 2008

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